The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18-28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Picon et al (Biotechnology Letters) for the reasons set forth in rejecting the claims in the last Office action. The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

Picon et al teach a process for producing cheese (e.g. Manchego) comprising the addition of phospholipase C in the amounts claimed to a conventional cheese making process (see entire document, especially the abstract and the Materials and Methods). Picon et al also teach cow's milk as an option (see page 347, column 2).

The claims appear to differ as to the specific recitation of purified phospholipase and an increase in cheese yield.

Purification of phospholipase and an increase in cheese yield would be no more than inherent and/or obvious to that of Picon et al as the same components and process steps are used to obtain the same final product.

Applicant's arguments filed March 15, 2012 have been fully considered but they are not persuasive.

Applicant argues that Picon et al results in reduced cheese yield.

Picon et al teach a process for producing cheese (e.g. Manchego) comprising the addition of phospholipase C in the amounts claimed to a conventional cheese making process (see entire document, especially the abstract and the Materials and Methods). It is not seen that Applicant has supplied data to support the conclusion that the method of Picon et al results in reduced cheese yield.

Claims 29-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Picon et al in view of Shipe et al (J Dairy Sci Vol 58, No. 8) for the reasons set forth in rejecting the claims in the last Office action.

Picon et al disclose a process for producing cheese (e.g. Manchego) comprising the addition of phospholipase C in the amounts claimed to a conventional cheese making process (see entire document, especially the abstract and the Materials and Methods). Picon et al also disclose cow's milk as an option (see page 347, column 2).

The claims appear to differ as to the specific recitation of phospholipase D.

Shipe et al disclose the treatment of milk with phospholipase C and D (see entire document, especially Table 3).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made to use phospholipase D in that of Picon et al because the use of phospholipase D in the treatment of dairy products is conventional in the art.

It is further noted that Applicant neither excludes additional components of Picon et al nor provides evidence to establish unexpected results.

Applicant's arguments filed March 15, 2012 have been fully considered but they are not persuasive.

Applicant argues that there is no motivation to combine Shipe et al with Picon et al and that Picon et al results in reduced cheese yield.

Picon et al teach a process for producing cheese (e.g. Manchego) comprising the addition of phospholipase C in the amounts claimed to a conventional cheese making process (see entire document, especially the abstract and the Materials and Methods). It is not seen that Applicant has supplied data to support the conclusion that the method of Picon et al results in reduced cheese yield.

It is not seen that Applicant has supplied data to support the conclusion that the method of Picon et al results in reduced cheese yield. It is noted that claim 29 does not claim limitations as to cheese yield and/or oiling off. It is further noted, in claim 30, that Applicant claims "and/or" with respect to cheese yield and oiling off, wherein both yield and oiling-off may or may not be affected.

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may

be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, the references are directed to the modification of milk using phospholipases. Once the art has recognized the use of phospholipases to modify milk, the use and manipulation of the phospholipases would be no more than obvious and expected to one of ordinary skill in the art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571)272-1411. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Humera Naz Sheikh can be reached on 571-272-0604. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/
Primary Examiner, Art Unit 1789

LAW
April 12, 2012